



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

TORT LIABILITY OF CONTRACTOR OR VENDOR TO PARTIES NOT PRIVY TO THE CONTRACT. — It is stated as a general rule of law that a contractor or vendor is not liable to third parties for the negligent construction of a chattel after its completion or sale.¹ The inroads, however, made upon this doctrine by American decisions² give pertinence to a questioning of its real existence in this country.

The principal reason urged in support of the rule in question is that a contractor or vendor owes no legal duty of care in the construction of his wares where there is no privity of contract. The American courts, however, early found such a legal duty owing to third parties where the chattels sold are imminently dangerous to human life.³ The principle of these cases has been applied not only where the article is imminently dangerous in its normal state, but also where such imminent danger arises solely from defects in its construction.⁴ Thus, in a recent case before the Kansas City Court of Appeals, a bridge company, which had turned over a bridge to county commissioners on a building contract, was held liable to the plaintiff for defects in the bridge which rendered it imminently dangerous to human life and of which the company had notice. *Casey v. Hoover*, 89 S. W. Rep. 330. Nor need the defects even be such as imminently to imperil life; if at the time of completion or sale the contractor or vendor knows of the latent defect, he will be liable, although the danger be not extraordinary.⁵ An attempt has been made to explain this latter class of cases on the ground of deceit. But to hold that a vendor by the mere sale of a chattel known to be defective, makes, with intent to defraud, a false representation to every probable user of that chattel, and that such third party acts in reliance upon such representation, is such a strain upon actual facts as to call for a broader ground of liability to support the cases. Under the decisions, the legal duty of a contractor or vendor to use care in the construction of chattels seems to extend generally to third parties, except, perhaps, in the single case where the defective article is but slightly dangerous to life, and the vendor has no knowledge of its condition at the time of sale.⁶

The reasoning of American courts in these cases⁷ shows a strong inclination to apply the basic principle of all liability for negligence — that where a person sustains such relations to society that danger to others will result from a failure to use due care in his activities, he owes the legal duty of such care to that class of persons likely to be injured by his failure to exercise it. The specific application of this principle would make a contractor or vendor liable to probable lawful consumers for the negligent construction of chattels, such liability being limited of course by the ordinary rules of "natural and probable cause" and "contributory negligence."⁸ The most palpable case for such an extension of a vendor's liability would be in favor of a sub-vendee where the chattel is sold to a retail dealer for the express purpose of resale; but on principle the extension should obtain

¹ *Winterbottom v. Wright*, 10 M. & W. 109.

² See *Huset v. J. I. Case Threshing Machine Co.*, 120 Fed. Rep. 865; 61 L. R. A. 303.

³ *Thomas v. Winchester*, 6 N. Y. 397; *Devlin v. Smith*, 89 N. Y. 470.

⁴ *Skinn v. Reutter*, 135 Mich. 57; see 17 HARV. L. REV. 274.

⁵ *Lewis v. Terry*, 111 Cal. 39; 31 L. R. A. 220.

⁶ *Schubert v. J. R. Clark Co.*, 49 Minn. 331.

⁷ See *Huset v. J. I. Case Threshing Machine Co.*, *supra*.

⁸ See 1 Thompson, Negligence §§ 821, 824; Clerk & Lindsell, Torts, 3d ed. 442-453; 21 Am. & Eng. Cyc., 2d ed., 461, 462.

in favor of every probable, lawful user, and such an extension has, in fact, been recognized in the case of the guest of a vendee who had bought for his own use.⁹ Though logically applicable to injuries to property, the proposed rule will probably not be extended beyond personal injuries for some time to come, in view of the fact that it is growing out of exceptions established in cases of imminent danger to life.¹⁰

NOTICE TO THIRD PARTIES OF ATTEMPTED REVOCATION OF AN AGENCY.—Revocation of an agency is not complete until notice of the revocation is given to the agent.¹ Nor is the agency terminated by the fact that a third person with whom the agent deals knows of the attempted revocation. Accordingly, a deed executed by an agent under these circumstances will pass a legal title to the purchaser. The application of these principles to a transfer by an agent under a statute providing for the recording of the revocation of the agent's authority has given rise to an interesting decision in the Wisconsin court. *Best v. Gunther*, 104 N. W. Rep. 918.² In this case neither the agent nor the third party had actual knowledge of the revocation which had been recorded by the principal, and the court held that a mortgage executed by the agent was binding against the principal. The dissenting justice, recognizing the hardship of this result, protected the principal by holding the record constructive notice to the agent. Although there is some authority to that effect,³ and the result is just, it would seem that the reasoning by which it is reached is fallacious. Constructive notice to the agent alone would not protect the principal, since, so long as the agent retains the instrument showing his authority, a *bona fide* purchaser from him gets a good title.⁴ To protect the principal constructive notice to the purchaser is necessary, and this, it seems, must be the sole purpose of the act. Even as the recording of transfers is provided for in order to put purchasers on their guard and show them where title actually is, so the record of a revocation is to protect the owner from the act of a dishonest agent.⁴ The record, therefore, must be held to give constructive notice to all who may subsequently deal with the agent; if this be not its object, the law requires a superfluous act.⁵ The agent, moreover, is not likely, nay, he is under no duty, to search the records for a change in title subsequent to the creation of his agency. He may even recover commissions upon contracts for the sale of land made after revocation of his agency by a transfer of the land by his principal and after such transfer is recorded.⁶

It is clear, then, that in a case like the present the purchaser gets a legal title, but it seems equally clear that he takes it subject to an equity. If the notice be actual, he is taking that which he knows his grantor does not intend and is even unwilling to part with. He obtains it by concealing that which if communicated would revoke the agency and vitiate the transfer.

⁹ *Lewis v. Terry*, *supra*.

¹⁰ But see *Skinn v. Reutter*, *supra*.

¹ See Story, Agency, 9th ed., § 470.

² For majority opinion, see *Best v. Gunther*, 104 N. W. Rep. 82.

³ *Arnold v. Stevenson*, 2 Nev. 234.

⁴ See *Tiffany, Agency*, 138, 151.

⁵ See *Arnold v. Stevenson*, *supra*.

⁶ *Loehde v. Halsey*, 88 Ill. App. 452.